

FILED

12/05/2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: AF 09-0688

Montana Supreme Court  
PO Box 203003  
Helena, MT 59620-3003

FILED

DEC 05 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Re: Professional Rules of Conduct; Rule 8.4

December 2, 2016

Honorable Members of the Court,

I am providing comment on the proposed change to Rule 8.4(g) of the Professional Rules of Conduct for Montana Attorneys. The changes to this rule, as published in AF 09-0688 and at the behest of the American Bar Association, will result in a violation of the First Amendment protections of attorneys in Montana and subsequently deprive religious organizations of legal expertise in the normal conduct of their activities.

Some of the ways in which attorneys may serve their congregations and communities include:

1. As members of the church board or council
2. Providing pro bono advice to their pastor or governing board concerning diverse issues, which may include same-sex marriage and gender issues
3. Serving their congregations as lay leaders through public readings, leading small group classes or youth education
4. Serving as board members of religious schools

In any of these activities, the attorney could be said to be acting "in connection with the practice of the law" (language from the ABA comments) if he makes a comment pertaining to current events. The practice of law does not curtail the constitutional rights of the attorney nor should it preclude his involvement with activities which have a religious or moral nature.

Just as important, this rule change could lead to a lack of representation for churches, pastors and other religious entities due to the chilling effect the rule will have on attorneys' speech. It would be far easier for an attorney to refuse as clients all churches and pastors rather than risk disciplinary action for work done on behalf of unpopular clients.

Lastly, this rule could dissuade students from pursuing a career in the law because they hold religious beliefs deemed to be "offensive" by some group. The end result will be the "ghettoization" of Christians and others who are not allowed to participate in certain spheres of public life.

In light of these very real threats to religious liberty, I ask the court not to implement Rule 8.4(g).

Sincerely,



Rev. Chad Schopp, Pastor  
Emmaus Lutheran Mission  
Big Timber and Livingston, Montana